

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,) CASE NO. 8:09CR357
)
Plaintiff,)
)
vs.) MEMORANDUM
)
PAUL R. MESSERSCHMIDT,) AND ORDER
)
Defendant.)

This matter is before the Court on the Defendant's "objection" to the Magistrate Judge's final judgment (Filing No. 36), considered as an appeal from the final Judgment entered by Magistrate Judge Thomas D. Thalken under Federal Rule of Criminal Procedure 58(g)(2)(B). Also before the Court is a memorandum from the Clerk of the Court regarding the Defendant's in forma pauperis status on appeal.

The plea agreement provides:

The Defendant hereby knowingly and expressly waives any and all rights to appeal the Defendant's conviction and sentence in this case, including a waiver of all motions, defenses, and objections which the Defendant could assert to the charges or to the Court's entry of Judgment against the Defendant, and including review pursuant to 18 U.S.C. § 2742 of any sentence imposed.

(Filing No. 21, ¶ 12.)

The Defendant filed an "objection" to the Judgment.¹ Specifically, the Defendant objects to special conditions of supervision nos. 8 and 9. There is no provision in the criminal rules of procedure or the law for an "objection" to a Magistrate Judge's Judgment

¹The Court notes that no objection was made orally at sentencing to the conditions of supervision in question.

in a misdemeanor case. Therefore, the “objection” was considered an appeal under Rule 58(g)(2)(B).

The government moves to dismiss the appeal based on the Defendant’s appeal waiver. The petition to enter a plea of guilty, the plea agreement, and the plea colloquy consistently show that the plea agreement and appeal waiver were knowingly and voluntarily entered into. The issues sought to be raised on appeal are within the scope of the appeal waiver. Therefore, consistent with the approach followed by the Eighth Circuit Court of Appeals, this Court will enforce the Defendant’s appeal waiver and dismiss the appeal. See, e.g., *United States v. Swanda*, 1010 WL 2925730, at *1 (8th Cir. July 28, 2010).

IT IS ORDERED:

1. The Defendant’s appeal from the Magistrate Judge’s final judgment (Filing No. 36) is denied; and
2. The Defendant may not proceed on appeal in forma pauperis.

DATED this 4th day of August, 2010.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge